

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MAKENZIE PAULY,  
Plaintiff,

v.

STANFORD HEALTH CARE,  
Defendant.

Case No. [18-cv-05387-SI](#)

**ORDER ON MOTION TO STRIKE  
AND ADMINISTRATIVE MOTIONS  
TO FILE UNDER SEAL**

Re: Dkt. Nos. 168, 169, 173, 189

Before the court are plaintiff's three administrative motions to file under seal. Dkt. Nos. 168, 169, 173. Also before the Court is defendant's motion to strike plaintiff's opposition to defendant's motion for summary judgment, attached declarations, and cross-motion for summary judgment. Dkt. No. 189; *see* Dkt. No. 175. For the reasons set forth below, the Court **GRANTS** the motions to file under seal and **DENIES** the motion to strike.

**I. Motion to Strike Plaintiff's Opposition to Summary Judgment, Cross-Motion for Summary Judgment, and Declarations In Support Thereof**

This case concerns defendant's alleged failure to screen and treat plaintiff when she was a minor in November and December 2008. Dkt. No. 1. The case has been delayed four years since plaintiff filed the Complaint as an adult and is approaching trial. *See* Dkt. No. 66. In a May 21, 2021 pretrial order, the Court set the following deadlines for dispositive motions:

DISPOSITIVE MOTIONS SHALL be filed by; 7/22/2022;  
Opp. Due: 8/4/2022; Reply Due: 8/12/2022;  
and set for hearing no later than 8/26/2022 at 10:00 AM.

*Id.* Plaintiff filed a motion for terminating sanctions and default judgment on July 2, 2022; that

1 motion was heard by Magistrate Judge Thomas Hixson on August 18. Dkt. No. 193. Objections to  
2 Judge Hixson's report and recommendation are due by September 5. Dkt. No. 195. Because of the  
3 hearing date for the motion for terminating sanctions, the Court postponed the hearing on dispositive  
4 motions until September 9, 2022 but reminded the parties that the other deadlines in the briefing  
5 schedule remained in effect, including the August 4 opposition deadline and August 12 reply  
6 deadline. Dkt. No. 170.

7 Defendant timely filed a motion for summary judgment on July 22, 2022. Dkt. No. 163.  
8 Plaintiff, who is *pro se*, did not file a motion for summary judgment by the dispositive motions  
9 deadline; she argues that she was confused about whether or not she could file a motion for summary  
10 judgment when defendant had already done so. Dkt. No. 196 at 4–5. After doing research online,  
11 plaintiff decided she should instead file a cross-motion for summary judgment. *Id.* at 5. Plaintiff  
12 untimely filed her opposition to plaintiff's motion for summary judgment and her cross-motion for  
13 summary judgment shortly before midnight on August 5, 2022, one day after the deadline for  
14 oppositions. She filed supporting declarations and exhibits after midnight on August 6, which she  
15 states was due to "technical difficulties." *Id.* at 6.

16 Defendant moves to strike plaintiff's opposition, cross-motion for summary judgment, and  
17 declarations in support because they are untimely filed. Dkt. No. 189. Plaintiff argues that she  
18 assumed the opposition deadline was August 5, two weeks after the July 22 motions deadline,  
19 because Civil Local Rule 7-3(a) states oppositions "must be filed and served not more than 14 days  
20 after the motion was filed." Dkt. No. 196 at 2. Plaintiff further argues that the Court incorrectly set  
21 an August 4 deadline in contravention of the Civil Local Rule. *Id.* at 4.

22 Plaintiff's argument that the Court's pretrial order violated Civil Local Rule 7-3(a) is  
23 unavailing. Scheduling dates were agreed upon by the parties. Dkt. No. 65. The Court has authority  
24 to set deadlines in a pretrial order. *See* Fed. R. Civ. P. 16. The order "controls the course of the  
25 action unless the court modifies it." Fed. R. Civ. P. 16(d).

26 Nonetheless, due to plaintiff's status as a *pro se* litigant and her apparent good faith  
27 confusion as to filing dates, the Court **DENIES** plaintiff's motion to strike. Under Federal Rule of  
28 Civil Procedure 6(b)(1)(B), "[w]hen an act ... must be done within a specified time, the court may,

for good cause, extend the time . . . on motion made after the time has expired if the party failed to act because of excusable neglect.” In assessing excusable neglect, the Court reviews the *Pioneer* factors: “(1) the danger of prejudice to the non-moving party, (2) the length of delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the moving party's conduct was in good faith.” *Pincay v. Andrews*, 389 F.3d 853, 854 (9th Cir. 2004). In this case, the length of delay was short and consequently prejudice to defendant was limited. Plaintiff’s opposition was filed a day late, and her supporting documents were about 45 minutes later than that. Dkt. No. 189. The Court finds that plaintiff’s conduct was in good faith and the delay was reasonable in light of plaintiff’s confusion as a pro se litigant. The *Pioneer* factors weigh in favor of permitting the filing; however, the parties are reminded that scheduling orders set by the Court must be followed.

## II. Administrative Motions to File Under Seal

Plaintiff has filed three administrative motions to file under seal. Dkt. Nos. 168, 169, 173. Docket numbers 168 and 169 seek to seal Plaintiff’s documents in support of her opposition and cross-motion for summary judgment. Docket number 173 seeks to seal documents filed by defendant. Defendant does not oppose any of the motions but indicates it believes docket numbers 168 and 169 are moot because plaintiff’s opposition and cross-motion for summary judgment should be stricken and docket number 173 is moot because defendant redacted the records. Dkt. Nos. 182, 184, 186. In light of defendant’s non-oppositions, the Court **GRANTS** plaintiff’s motions to file under seal.

## III. Conclusion

Defendant’s motion to strike plaintiff’s opposition to defendant’s motion for summary judgment, cross-motion for summary judgment, and declarations in support thereof is **DENIED**. Plaintiff’s administrative motions to file under seal are **GRANTED**. The following documents are hereby sealed:

1. Dkt. Nos. 165-1, 165-2, 165-3, and 165-4;

2. Dkt. No. 168-4; and

3. Dkt. No. 169-4.

**IT IS SO ORDERED.**

Dated: August 31, 2022



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SUSAN ILLSTON  
United States District Judge